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Attorneys for Defendant
JOSE HUIZAR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

MAYRA ALVAREZ,

Plaintiff,

v.

JOSE HUIZAR, an individual; CITY OF
LOS ANGELES, a municipality; and DOES
1-10, inclusive,

Defendants.

Case No. 18STCV01722

[Assigned for All Purposes to:
Hon. Richard E. Rico, Dept. 17]

**DEFENDANT JOSE HUIZAR'S NOTICE OF
MOTION AND MOTION FOR AN ORDER
SEALING MOTION FOR STAY;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
CARMEN M. AGUADO**

(California Rules of Court Rules 2.550-2.551)

*[Filed concurrently with [Proposed] Order and
Notice of Lodging]*

Date: May 16, 2019

Time: 8:30 a.m.

Dept.: 17

RESERVATION NO.:761170692344

Action Filed: October 22, 2018

Trial Date: None Set

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD,

PLEASE TAKE NOTICE that, on May 16, 2019 at 8:30 a.m., or as soon thereafter as the
matter may be heard in Department 17 of the above-entitled Court, located at 111 N. Hill St., Los
Angeles, California 90012, Defendant JOSE HUIZAR ("Defendant Huizar") will, and hereby

LA #4828-2394-5619 v1

1 does, move pursuant to Rule 2.550 of the California Rules of Court for an Order permitting
2 Defendant Huizar to either:

3 1. File under seal a motion to stay all proceedings along with all documents concurrently
4 filed therewith; or, in the alternative,

5 2. File under seal the following portions of Defendant Huizar's motion to stay:

6 a. Declaration of Mary Carter Andruess, Defendant Huizar's attorney related to the
7 criminal investigation:

- 8 • Paragraphs 2, 3, 4, 6, 7, which include Ms. Andruess' thoughts and opinions
9 of the pending criminal investigation in relation to this instant civil case;

10 b. Declaration of James H. Demerjian:

- 11 • Exhibits 1 and 2, which include Plaintiff's discovery request that may
12 reveal confidential information related to the pending criminal
13 investigation that is not yet public; and

14 c. Portions of the Motion to Stay that reference the sections of the Declarations of
15 Ms. Andruess and Mr. Demerjian that Defendant Huizar seeks to seal, which are
16 cited above:

- 17 • Page 3, Lines 6-7;
- 18 • Page 4, Lines 12-18;
- 19 • Page 5, Lines 11-14;
- 20 • Page 7, Lines 1-2; 3-6, 9-14;
- 21 • Page 7, Line 24 – Page 8, Line 3;
- 22 • Page 8, Lines 5-7; 14-22; 25-27; and
- 23 • Page 9, Lines 4-16.

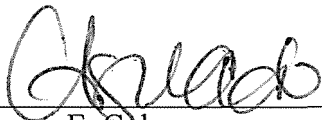
24 As set forth below, good cause exists to seal the motion to stay or, in the alternative, the
25 aforementioned portions of Defendant Huizar's motion to stay because (i) Defendant Huizar has
26 an overriding interest in maintaining information related to the pending criminal investigation and
27 the work product of his attorney handling the criminal investigation, which is referenced within
28 his motion to stay and support thereof, confidential and his interest overcomes the right of public

1 access to this information; (ii) a substantial probability exists that the overriding interest will be
2 prejudiced if such information is not sealed; and (iii) Defendant Huizar's request for sealing is
3 narrowly tailored and no less restrictive means exist to achieve the overriding interest. Namely,
4 Defendant Huizar does not seek to seal all filings in this matter. He simply seeks to file one filing
5 – the motion to stay – under seal or, in the alternative, the select portions of the motion to stay
6 referenced above.

7 This motion is based on this notice, the accompanying Memorandum of Points and
8 Authorities, and the Declaration of Carmen M. Aguado, the papers and records on file herein, and
9 on any oral argument and documentary evidence as may be presented at the hearing on this
10 motion.

11 Dated: April 19, 2019

BURKE, WILLIAMS & SORENSEN, LLP

12
13 By: 

14 Susan E. Coleman
15 Carmen M. Aguado
16 Attorneys for Defendant
17 JOSE HUIZAR
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Journal Technologies Court Portal

Court Reservation Receipt

Reservation			
Reservation ID: 761170692344		Status: RESERVED	
Reservation Type: Motion to Seal (Motion to Stay)		Number of Motions: 1	
Case Number: 18STCV01722		Case Title: MAYRA ALVAREZ vs JOSE HUIZAR, et al.	
Filing Party: City of Los Angeles (Defendant)		Location: Stanley Mosk Courthouse - Department 17	
Date/Time: June 24th 2019, 8:30AM		Confirmation Code: CR-TQXUVQVY4ZLNNE5GJ	
Fees			
Description	Fee	Qty	Amount
Motion to Seal (name extension) *** Fees Exempted by Gov Code 6103.1 ***	60.00	1	0.00
TOTAL			\$0.00
Payment			
Amount: \$0.00		Type: GOVT_EXEMPT	

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Defendant Jose Huizar (“Defendant Huizar”), an elected member of the Los Angeles City
4 Council, respectfully submits this request to seal his motion to stay all proceedings in order to
5 protect his private information, Constitutional rights, and his attorneys’ privileged work product.
6 Defendant Huizar requests an order allowing the motion to stay to be filed under seal in its
7 entirety, including the declarations of Mary Carter Andruess, Defendant Huizar’s attorney related
8 to the criminal investigation, and James H. Demerjian and Exhibits attached thereto.

9 In the alternative, Defendant Huizar respectfully requests this Court to Order the
10 following portions of the documents to be filed under seal:

- 11 • Declaration of Ms. Andruess:
- 12 ○ Paragraphs 2, 3, 4, 6, 7, which include Ms. Andruess’ thoughts and opinions of the
13 pending criminal investigation in relation to this instant civil case;
- 14 • Declaration of James H. Demerjian:
- 15 ○ Exhibits 1 and 2, which include Plaintiff’s discovery request that may reveal
16 confidential information related to the pending criminal investigation that is not yet
17 public; and
- 18 • Portions of the Motion to Stay that reference the sections of the Declarations of Ms.
19 Andruess and Mr. Demerjian that Defendant Huizar seeks to seal, which are cited above:
- 20 ○ Page 3, Lines 6-7;
- 21 ○ Page 4, Lines 12-18;
- 22 ○ Page 5, Lines 11-14;
- 23 ○ Page 7, Lines 1-2; 3-6, 9-14;
- 24 ○ Page 7, Line 24 – Page 8, Line 3;
- 25 ○ Page 8, Lines 5-7; 14-22; 25-27; and
- 26 ○ Page 9, Lines 4-16.

27 Defendant Huizar respectfully submits this motion in order to protect his privacy and
28 constitutional rights, including his Fifth and Sixth Amendment rights, pending resolution of a

1 purported criminal investigation initiated by the U.S. Attorney's Office and the Federal Bureau of
2 Investigation (FBI), which is under close scrutiny by the media. (*See* Decl. of Carmen M. Aguado
3 ("Aguado Decl.") ¶ 2.) Additionally, the documents filed in support of Defendant Huizar's
4 motion to stay contain attorney-work product that is necessary to demonstrate the heightened
5 importance of staying the civil matter.

6 As demonstrated below, there exists an overriding interest that overcomes the right of
7 public access to the records at issue. The overriding interest supports sealing the records and a
8 substantial probability exists that the overriding interest will be prejudiced if the records are not
9 sealed. Lastly, Defendant Huizar's proposed sealing is narrowly tailored and no less restrictive
10 means exist to achieve the overriding interest given he only seeks to seal a single filing in this
11 matter (the motion to stay) or, in the alternative, select portions of the filing. For these reasons,
12 Defendant Huizar respectfully requests this Court to grant his request to seal the motion to stay.

13 **II. THE RECORDS SHOULD BE SEALED BECAUSE DEFENDANT HUIZAR'S**
14 **INTERESTS OUTWEIGH THE RIGHT OF PUBLIC ACCESS TO THE**
15 **RECORDS.**

16 The public's right of access to judicial records is not absolute. Rather, California Rule of
17 Court 2.550 provides that certain materials meeting the Rule's criteria may be filed under seal.
18 Pursuant to Rule 2.550(d), a court should order that a record be sealed if:

- 19 (1) There exists an overriding interest that overcomes the right of public access to the
20 record;
- 21 (2) The overriding interest supports sealing the record;
- 22 (3) A substantial probability exists that the overriding interest will be prejudices if the
23 record is not sealed;
- 24 (4) The proposed sealing is narrowly tailored; and
- 25 (5) No less restrictive means exist to achieve the overriding interest.

26 *See also* Advisory Committee Comment to Cal. R. Ct. 2.550(d) (recognizing that "[u]nder
27 appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when
28

1 properly asserted, and not waived, may constitute ‘overriding interests’ that justify permanently
2 sealing records submitted as a basis for adjudication).

3 Moreover, records may be sealed on the ground that the disclosure of said records may
4 violate a party’s right to privacy, Fifth Amendment rights, and/or reveal attorney-work product.
5 *See e.g., In re Marriage of Burkle* (2006) 135 Cal. App. 4th 1045, 1063, *as modified* (Feb. 1,
6 2006) (“The right to privacy is an inalienable right guaranteed under the California Constitution,
7 and has been acknowledged as an overriding interest in certain individualized contexts.”); *see*
8 *also United States v. Hyde* (N.D. Cal. 2002) 208 F. Supp. 2d 1052, 1056.

9 **A. Defendant Huizar Has An Overriding Interest In Protecting His Privacy And**
10 **Constitutional Rights That Are Implicated In The Underlying Motion To Stay**
11 **And His Overriding Interests Support Sealing The Records.**

12 Defendant Huizar seeks to file his motion to stay under seal because the information
13 which the motion relies implicates Defendant Huizar’s right to privacy, potentially impinges his
14 rights under the Fifth and Sixth Amendments, and discloses attorney-work product.

15 Here, protecting the integrity of the criminal investigation is implicated by virtue of the
16 public nature of court filings in this matter – here, the motion to stay and the documents which it
17 relies. Protecting the integrity of the criminal investigation, the status of which is discussed within
18 Defendant Huizar’s motion to stay and documents filed in support thereof, as well as Defendant
19 Huizar’s right to a fair trial are textbook interests used by courts to seal materials. *See United*
20 *State Constitution, Fifth Amendment, California Constitution, Article I, § 15; NBC Subsidiary*
21 *(KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, fn. 46; *see also Times Mirror Co. v.*
22 *United States*, 873 F.2d 1210, 1213 (9th Cir. 1989) (“Openness may, for example, frustrate
23 criminal investigations and thereby jeopardize the integrity of the search for truth that is so
24 critical to the fair administration of justice.”).

25 Additionally, it is well established that attorney work product, which includes an
26 attorneys’ thoughts and opinions on a matter, is privileged information. *See Meza v. H.*
27 *Muehlstein & Co.* (2009) 176 Cal. App. 4th 969, 977. Here, Defendant Huizar intends to file the
28 declaration of Mary Carter Andruess, Defendant Huizar’s attorney retained in relation to the

1 criminal investigation, in support of his motion to stay. Ms. Andruess' declaration contains her
2 thoughts and opinions related to the criminal investigation which are used to demonstrate the
3 heightened importance and necessity of staying this instant civil matter. While her work product
4 is necessary to demonstrate the merits of the motion to seal, it is not necessary to be accessed by
5 the public.

6 **B. A Substantial Probability Exists That Defendant Huizar's Overriding Interest**
7 **Would Be Prejudiced If The Records Are Not Sealed.**

8 If the records were not sealed, the effect on Defendant Huizar's Constitutional rights and
9 the integrity of the investigation would be substantial. This matter as well as the criminal
10 investigation are being followed closely by the media, and reported, which may spoil the public's
11 evaluation of this matter as well as the integrity of the investigation. (*See* Aguado Decl. ¶ 2.)

12 Defendant Huizar's interest would be prejudiced if the records are not sealed.

13 **C. Defendant Huizar's Request To Seal Is Narrowly Tailored And No Less**
14 **Restrictive Means Exists To Achieve The Overriding Interest.**

15 This motion is narrowly tailored because it seeks to seal only records pertaining to one
16 motion. To the extent that the Court is not inclined to seal the entirety of the motion to stay,
17 Defendant Huizar provides an even more narrowed request to redact particular portions of the
18 motion to stay and materials filed in support thereof. Redacted copies of the records could be
19 available for the public to access if this motion is not granted. Furthermore, less restrictive means
20 to secure this private information does not exist. Absent sealing, the records would become
21 public, the information contained in the records would be taken out of context, and Defendant
22 Huizar's Constitutional rights implicated in the investigation and in the defense of this matter
23 would be prejudiced.

24 **III. DEFENDANT HUIZAR HAS COMPLIED WITH THE PROCEDURAL**
25 **REQUIREMENTS OF RULE 2.551 OF THE CALIFORNIA RULES OF COURT.**

26 As the party seeking to maintain the confidentiality of the motion to stay and its
27 supporting documents, Defendant Huizar is required to lodge the records with the court at the
28

1 time the motion is made. *See* Cal. Rule of Ct. 2.551(b)(1) and (b)(4). Defendant Huizar has
2 complied with this requirement. (*See* Aguado Decl. ¶ 3.)

3 **IV. CONCLUSION**

4 For the reasons set forth above, Defendant Huizar respectfully requests the Court to grant
5 his motion.

6 Dated: April 19, 2019

BURKE, WILLIAMS & SORENSEN, LLP

By: 

Susan E. Coleman
Carmen M. Aguado
Attorneys for Defendant
JOSE HUIZAR

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1 **PROOF OF SERVICE**

2 I, Susan Vasquez, declare:

3 I am a citizen of the United States and employed in Los Angeles County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 444 South Flower Street, Suite 2400, Los Angeles, California 90071-2953. On April 19, 2019,
6 I served a copy of the within document(s):

7 **DEFENDANT JOSE HUIZAR'S NOTICE OF MOTION AND
8 MOTION FOR AN ORDER SEALING MOTION FOR STAY;
9 MEMORANDUM OF POINTS AND AUTHORITIES;
10 DECLARATION OF CARMEN M. AGUADO**

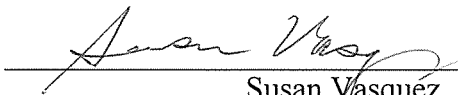
- 11 ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set
12 forth below on this date before 5:00 p.m.
- 13 ☒ by placing the document(s) listed above in a sealed envelope with postage thereon
14 fully prepaid, the United States mail at Los Angeles, California addressed as set
15 forth below.
- 16 ☐ by placing the document(s) listed above in a sealed _____ envelope and
17 affixing a pre-paid air bill, and causing the envelope to be delivered to
18 a _____ agent for delivery.
- 19 ☐ by personally delivering the document(s) listed above to the person(s) at the
20 address(es) set forth below.
- 21 ☐ by transmitting via my electronic service address (scoleman@bwslaw.com) the
22 document(s) listed above to the person(s) at the e-mail address(es) set forth below.

23 (Service List attached)

24 I am readily familiar with the firm's practice of collection and processing correspondence
25 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
26 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
27 motion of the party served, service is presumed invalid if postal cancellation date or postage
28 meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above
is true and correct.

Executed on April 19, 2019, at Los Angeles, California.


Susan Vasquez

SERVICE LIST
Medina v. Huizar, et al.
18STCV03011

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